IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7355 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAHIMKHAN IBRAHIMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS DEVYANI N DAVE for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. The petitioner came to be detained by virtue of an order passed by the Commissioner of Police, Vadodara on 26th March, 1999 in exerciser of powers under Section 3(2) of Gujarat Prevention of Anti Social Activities Act (`PASA' for short).

#. The grounds of detention indicate that the detaining authority took into consideration three offence registered against the petitioner with Vadodara City Police Station and Sayajiganj Police Station. The detaining authority also took into consideration the statements of three anonymous witnesses whose identity has not been disclosed by the detaining authority in exercise of powers under Section 9(20 of PASA Act. The detaining authority came to the conclusion that the petitioner is a dangerous person as contemplated under the PASA Act, that his activities are required to be urgently prevented as they are detrimental to the public order and resorting to ordinary laws, may not prove to be efficacious and therefore, detention under PASA is only remedy available that can be resorted for immediately preventing the petitioner from continuing his illegal and anti social activities. The petitioner was therefore detained on 26th March, 1999.

#. The petitioner has approached this Court through Jail but he is represented by Ms.Rukhasana Pathan appearing by way of legal aid. Her contention is that the last statement of the anonymous witness was recorded on 6th March, 1999 and the order was passed on 27th march, 1999. Therefore, there is delay in passing the order, which would vitiate the order of detention as the satisfaction for the urgent need recorded by the detaining authority cannot be considered as genuine.

#. Mr.K.T.Dave, learned AGP has opposed this petition. He placed on record the affidavit of the Commissioner of Police, Vadodara City - the detaining authority in the matter and submitted that the detaining authority has passed the order as early as possible after application of mind and time is consumed in office procedure. It therefore cannot be considered as delayed order. He has produced before this Court for perusal a file of the detaining authority as the other papers relating to the detention are not available on record of this Court as the application has come through jail. It transpires that the proposal was prepared by the sponsoring authority on 28th February 1999. The sponsoring authority is the Police Inspector, DCB Vadodara. It could reasonably be expected to have reached the detaining authority on that very date or the day thereafter. The order is passed on 27th March 1999 and therefore, there is delay of about one month on the part of the detaining authority in passing the order. The detaining authority has filed affidavit in reply. No explanation is tendered in the affidavit for the delay in

passing the order after receipt of the proposal. In this view of the matter, the order of detention would stand vitiated on ground of delay. The petitioner therefore deserves to be allowed.

#. The petition is allowed. The order passed by the Commissioner of Police, Vadodara dated 26th March, 1999 against the petitioner RAHIMKHAN IBRAHIMKHAN PATHAN is hereby quashed and set aside. The petitioner RAHIMKHAN IBRAHIMKHAN PATHAN ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. No costs. The writ be urgently sent Jail Authorities directly.

Date : 6-3-2000 [A.L.Dave, J.]

#kailash#